LEASE AGREEMENT

This Lease Agreement is made and entered into this 25th day of June, 1991 by and between Guy Gannett Publishing Co., (a Maine corporation with offices in Miami, Florida doing business as Bithlo Tower Company ("Landlord"), and Press Broadcasting Company, a NEW JERSEY corporation, with offices in NEPTUNE, NEW JERSEY ("Tenant").

WITNESSETH

WHEREAS, Landlord is the owner of certain real property ("Premises") located at Bithlo, Florida more particularly described on Exhibit A hereto; and

WHEREAS, Landlord has erected on the Premises a communications transmission tower ("Tower") substantially as described in Exhibit C hereto and a transmitter building (the building with any and all future additions thereto, hereinafter the "Transmitter Building"); and

WHEREAS, Tenant is the Federal Communications Commission ("FCC") licensee for Television Station 18, CLERMONT/ORLANDO Florida (the "Station") and desires to place and operate the antenna for the Station at a location on the Tower, said location being described in Exhibit C hereto (the "Antenna Space"), to install and to maintain at Tenant's expense certain transmission lines from the Station's transmitter equipment across or under portions of the Premises and through or upon the Tower to the Antenna Space, and to occupy an area in an addition (to be constructed)to the Transmitter Building as shown on Exhibit B-1 hereto (the "Tenant's Space") in which to locate the Station transmitter and related equipment; and

WHEREAS, Tenant requires other space on the Premises for the installation of Tenant's generator and related fuel storage tank and one satellite earth station, with the further right to interconnect such equipment with equipment in the Tenant's Space in the manner provided herein; and

WHEREAS, Tenant has applied for and has received a construction permit issued by the FCC (the "Construction Permit") to locate its antenna on the Tower and to install its transmitter in the Transmitter Building, which Construction Permit approval is subject to a Petition for Reconsideration and Stay filed by Rainbow Broadcasting Company;

NOW, THEREFORE, in consideration of Tenant's obligation to pay rent and in consideration of the mutual rights, obligations, terms, covenants, and provisions hereof, the parties mutually agree as follows:

in Article VIII of this Lease, any delay, disruption or hindrance caused to Tenant, its broadcasting, transmission or business occasioned by the installation, relocation or removal of equipment of other parties using the Tower or Transmitter Building shall not affect or impair Tenant's obligation to pay rent hereunder.

(l) Permitted Uses; Nuisances. Tenant shall use the Leased Premises exclusively for its broadcasting activities. Tenant shall not maintain, commit or permit any nuisance or unsafe condition. If Tenant, upon five (5) days' notice from Landlord, shall fail to remedy any such nuisance or unsafe condition, Landlord may do the same, and Tenant shall, when invoiced, reimburse Landlord for the costs and expenses thereof.

(m) Necessary Permits. Tenant, at its own cost and expense, shall obtain and maintain in effect any and all permits, licenses and approvals that may be required with respect to Tenant's equipment or activities by each governmental authority having jurisdiction.

(n) INTENTIONALLY DELETED

(o) Location of Equipment. Tenant acknowledges that, because its antenna was not designed for installation on the Tower, the aperture for Tenant's equipment may overlap with that of Rainbow Broadcasting, Channel 65. Although Channel 65's equipment has not yet been installed on the Tower, Landlord wishes to protect Channel 65 from any and all interference which may be caused by Tenant's equipment, and also wishes to provide safe radiation levels (as defined in the ANSI Regulations, as revised from time to time) on the 1400 foot level Tower platform. Tenant hereby agrees that, if at any time or from time to time, it is notified of any (i) interference with Channel 65 or any other tenant of the Tower caused by Tenant's location or angling of its equipment on the Tower, or (ii) violations of safe radiation levels (as defined above) on any Tower platform, in addition to all other obligations of Tenant under this Lease, Tenant shall take any and all action necessary (including, without limitation, modification or replacement of its antenna and other equipment) to eliminate such problem(s).

In the event that there is any aperture shared by Tenant and Channel 65, Landlord shall not be liable to Tenant or anyone claiming by, under or through Tenant for any loss or damage caused by or relating to pattern distortion or interference to Tenant's signal caused by the location of Tenant's equipment on the Tower.

(p) Intentionally Deleted

EXHIBIT B

EXHIBIT B

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of	)	
	)	
RAINBOW BROADCASTING COMPANY	)	File Nos. BMPCT-910125KE
	)	BMPCT-910125KE
For Extension of Construction	)	BTCCT-911129KT
Permit and For Consent to	)	
Transfer of Control of Station	)	
WRBW(TV), Orlando, Florida	)	

To: The Commission

RAINBOW OPPOSITION TO PRESS EMERGENCY PETITION

Rainbow Broadcasting Company, permittee of UHF television Station WRBW, Channel 65, Orlando, Florida, hereby opposes the 13 August 1993 filing by Press Broadcasting Company entitled "Emergency Petition for Immediate Rescission, Setting Aside or Vacation of Action Taken Pursuant to Delegated Authority". Press' Petition (page 1) asks the Commission "to immediately rescind, set aside, vacate or otherwise nullify the action taken by the Chief, Mass Media Bureau," in reconsidering and granting an extension of time to construct and a pro forma transfer of control of Rainbow. The basis for Press' Petition is the claim that the proceeding was a restricted one and that Rainbow violated the ex parte rules by speaking to members of the Commission's staff during the reconsideration process. As will be shown, Press mistakes the law.

Press, operator of independent UHF Station WKCF(TV), Cocoa, Florida, would be competitively benefitted by preventing Rainbow's WRBW(TV), a new independent UHF station, from operating in the market. In furtherance of this anticompetitive effort, Press has objected at every stage to Rainbow's efforts to move forward with construction and commencement of operation of its station, including its initially successful effort to prevent grant of Rainbow's Form 307 extension request filed in January 1991 (File No. BMPCT-910125KE) and its *pro forma* transfer request filed in November 1991 (File No. BTCCT-911129KT). Of controlling relevance in the present context, however, because it determines the applicability of the Commission's *ex parte* rules, is the fact that Press, a party with no legal standing to object to Rainbow's requests,[1/]

1/ Press has apparently sought to formalize its status or position itself for an otherwise wholly impermissible appeal by asserting competitive standing under *F.C.C. v. Sanders Bros. Radio Station*, 309 U.S. 470 (1940). However, Press' failed to seek timely intervention in the underlying licensing proceeding and a standing claim cannot support an otherwise impermissible effort to prevent or delay Rainbow's operation now. Nor could Press establish standing, either administrative, *Tele-Visual Corp.*, 33 F.C.C.2d 418 (1972); *Coronado Communications Company*, 8 FCC Rcd. 159, 160 (BB 1992), or judicial, *California Association of Physically Handicapped v. F.C.C.*, 778 F.2d 823 (D.C. Cir. 1985), to challenge the minor modifications at issue here because such actions, unlike the underlying grant, do not and cannot cause aggrievement. Moreover, and as a separate matter, Press' informal objections have never been accompanied by affidavits of persons with personal knowledge of the

has pursued its efforts through the filing of pleadings specifically denominated "informal objections".

When the Commission revised its *ex parte* rules in 1987, it restructured them into "three broad categories": 1) proceedings to which no *ex parte* constraints would apply, "as well as certain other general exemptions from the *ex parte* rules"; 2) "'non-restricted'" proceedings, "in which *ex parte* presentations would generally be permitted but would be subject to specific disclosure requirements"; and "'restricted' proceedings, in which, subject to the exemptions, no ex parte presentations would be permitted." *Ex Parte Rules*, 2 FCC Rcd. 3011 (1987). As Press correctly notes, citing a letter from the Managing Director to the author of a letter commenting on an earlier Rainbow extension request, the present situation fits into the third category, "restricted" proceedings. However, it does not follow therefrom, as Press contends, that Rainbow was prohibited from engaging in *ex parte* communications with the Commission staff concerning its extension of time to construct.

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facts asserted, barring them from formal consideration by Section 309(d)(1) of the Act. *See Christian Broadcasting Association*, 77 F.C.C.2d 858 (1980); *KHVH, Inc.*, 77 F.C.C.2d 890 (1980). Press' claim to formal participatory rights should be explicitly rejected.

In its revision of Rule 1.1204, the Commission specifically exempted "adjudicative proceedings which", like the present one, "are not formally opposed, do not involve mutually exclusive applications, and have not been designated for hearing." *Ex Parte Rules, supra*, 2 FCC Rcd. 3011, 3016; *see* Rule 1204(a)(1). Further, the newly revised rules specifically authorized *ex parte* contacts between an applicant in Rainbow's position and the Commission's staff (but not informal objectors like Press and the writer of the letter to the Managing Director) by adopting a Note, applicable to Rule 1.1204(a)(1), which provides that in proceedings exempted under that subsection:

> [O]ral ex parte communications are permissible, but only between the Commission and the formal party involved or his representative. Any informal objectors (whether their objections are oral or written) are subject to ex parte procedures set forth in 1.1208 barring ex parte contacts except where confidentiality is necessary to protect those persons from reprisals. . . .

In an apparent attempt to avoid the force of this provision, Press suggests that because at an earlier stage of this proceeding it filed a petition for reconsideration of a Commission action granting Rainbow an extension of time to construct, its status can now nunc pro tunc be upgraded to that of a formal objector and the proceeding converted into a non-exempt one. This line of

reasoning is multiply flawed: In the first place, it was Press' express intent at the time to be an informal objector. A petition for reconsideration was filed only because the Commission had already granted the extension request by the time Press' informal objections were lodged; the reconsideration pleading did not constitute a formal objection but simply resubmitted the original informal objections under a new title. See Petition, page 2 & n.2.

Secondly, Press was not entitled to seek reconsideration, because informal objectors are barred as a matter of law from doing so by Rule 1.106(b). *See Redwood Microwave Association*, 61 F.C.C.2d 442 (1976). Third, even were such a petition not otherwise prohibited, reconsideration is available only to parties to the proceeding, which Press was not, or "any other person whose interests are adversely affected" by the Commission's action, and who "state[s] with particularity the manner in which [his] interests are adversely affected." Press failed to make the required recitation and that failure was fatal.2/

2/ As a practical matter, the only effect of any Rainbow extension on Press is to defer the very competition Press seeks to avoid, thus actually conferring a benefit.

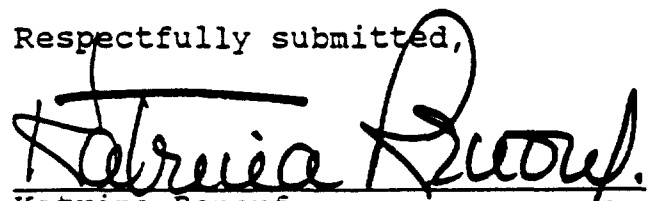
And finally, even Press' improper effort to denominate its unauthorized petition for reconsideration the "formal objection" which triggers the *ex parte* rules concerned only a single extension of time, action on which would dispose of whatever objections had been made in that proceeding. Thus it was necessary for Press to file new oppositions to both the subsequent request for pro forma transfer and any subsequent extension proceeding, such as the present one. This it did, but in each case as an informal objector (its original April 30, 1993 opposition herein was entitled "Supplement to Informal Objections"), thus ensuring the exempt status of the proceeding under Rule 1.1204(a)(1) and the Note thereto.

The Commission's rules make it very easy for a party seeking to invoke *ex parte* restrictions to do so: it is necessary only to file a formal opposition. Even when such pleadings have been treated as informal objections by the staff they have been deemed to confer the formality requisite to imposition of *ex parte* constraints. *E.g., Letter to Michael L. Glaser*, 4 FCC Rcd. 4557. But the Commission has been very clear, both in and after the 1987 rulemaking that until the filing of a formal opposition, the formal party to the proceeding remains free to engage in *ex parte* communication with the staff and to do

so without disclosure. *See Ex Parte Communications*, 3 FCC Rcd. 3995 (1988). Accordingly, there has been no *ex parte* violation here.

Given the obvious inapplicability of the *ex parte* rules, it seems equally obvious that Press' real purpose here was to file an unauthorized application for review of the staff's action on the merits in a guise which would induce its consideration. Thus, Press seeks to characterize itself as the "losing party" (Petition, page 6), when it is not and never has been a party at all. Press' efforts have already delayed inauguration of Rainbow's service by almost two years. This further effort to abuse Commission processes to prevent or delay the inauguration of a competing station after Rainbow has gone forward with construction in reliance upon the extension, should be summarily rejected.

Respectfully submitted,



Katrina Renouf
RENOUF & POLIVY
1532 Sixteenth Street, N.W.
Washington, D.C. 20036
202.265.1807

Counsel for Rainbow
Broadcasting Company

26 August 1993

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Rainbow Opposition to Press Emergency Petition were sent first class mail, postage prepaid, this twenty sixth day of August 1993, to the following:

Roy J. Stewart, Chief
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 314
Washington, D.C. 20554

Barbara A. Kreisman, Chief
Video Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 702
Washington, D.C. 20554

Clay Pendarvis, Chief
Television Branch, Video Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 700
Washington, D.C. 20554

Harry F. Cole, Esquire
Bechtel & Cole
1901 L Street, N.W.
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Washington, D.C. 20036
Counsel for Press Broadcasting Company, Inc.

Paul Gordon, Esquire
Television Branch, Video Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 700
Washington, D.C. 20554

Katrina Renouf

EXHIBIT C

EXHIBIT C

S-W-R INC.
SYSTEMS WITH RELIABILITY

Manufacturing of and Field Service
For TV-FM RF Components
Phone: 814-472-5436
Fax: 814-472-5552

RD 3 • Box 182
P.O. Box 856
Ebensburg, PA 15931-0856

September 10, 1993

Rainbow Broadcasting
151 Crandon Blvd. #110
Key Biscayne, Florida 33149

Attention, Joe Rey

Re: Proposal 090893-01

Dear Mr. Rey,

This letter is to confirm an order that you have placed with our company for a Channel 65 Antenna, WR 1400 Waveguide, and associated components.

We are in receipt of the signed proposal (Bid No. 090893-01) and the 35% down-payment. Delivery and subsequent installation of the antenna and waveguide will be between 12-15 weeks.

Sincerely,

Douglas A Ross

Douglas A. Ross
Chief Engineer

DAR/ets

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Rainbow Opposition to Press Contingent Application for Review were sent first class mail, postage prepaid, this tenth day of September 1993, to the following:

Roy J. Stewart, Chief
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 314
Washington, D.C. 20554

Barbara A. Kreisman, Chief
Video Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 702
Washington, D.C. 20554

Clay Pendarvis, Chief
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Paul Gordon, Esquire
Television Branch, Video Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 700
Washington, D.C. 20554

Katrina Renouf

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of	)	
	)	
RAINBOW BROADCASTING, LTD.	)	File Nos. BMPCT-910625KP
	)	BTCCT-911129KT
For Extension of Construction	)	
Permit and for Consent to	)	
Assignment of Station WRBW(TV)	)	
Orlando, Florida	)	

To: Office of the General Counsel

COMMENTS OF RAINBOW BROADCASTING, LTD.
ON INSPECTOR GENERAL'S REPORT

Pursuant to the March 8, 1984 letter of Deputy General Counsel Christopher J. Wright, Rainbow Broadcasting, Ltd. submits its comments on the November 22, 1993 Report of the Inspector General, entitled "Investigation of Violation of the *Ex Parte* Rule by Mass Media Bureau Personnel." Mr. Wright's letter requests comment on the Inspector General's findings "insofar as they relate to disposition of the above-captioned applications of Rainbow Broadcasting Company currently under review before the Commission." Rainbow notes at the outset that since the entire basis for the Inspector General's finding of *ex parte* violations by the Commission's staff is his erroneous legal conclusion that this is a non-exempt restricted proceeding, correction of that error is

dispositive of his Report, conclusively establishing the absence of any impropriety by anyone.[1/] Nonetheless, the comments which follow are fully responsive to the Inspector General's Report.

Part I provides relevant historical information omitted from the initial "Background" section of the Inspector General's Report and corrects various misleading implications therein. Part II addresses the legal errors of the reading of the *ex parte* rules proposed in the second and fourth sections of the Inspector General's Report, entitled respectively, "The application of the *ex parte* rule" and "Propriety of Mass Media Bureau actions in this matter." Part III identifies various inaccuracies in the Inspector General's factual recitation concerning the July 1, 1993 meeting and surrounding events, as found in the third section of his Report, entitled "Failure of Mass Media Bureau personnel to treat the proceeding as restricted." Finally, Part IV identifies the serious policy dangers in both the Inspector General's reading of the rules and his proposals for changes

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1/ Given the centrality of this legal issue, which the Report concedes is not within the Inspector General's jurisdiction, conduct of this investigation prior to Commission resolution of that issue was at best premature since if the proceeding was exempt there was nothing to investigate.

therein, as discussed in the fifth section of his Report, entitled "The *ex parte* rule needs to be simplified."

I. THE INSPECTOR GENERAL'S RECITATION OF THE BACKGROUND OF RAINBOW'S EXTENSION REQUEST IS INCOMPLETE AND MISLEADING.

Rainbow Broadcasting Company filed its application for construction permit for a new UHF station on Channel 65, Orlando, Florida in September 1982 (BPCT-820909KF). After an extensive comparative hearing in which Rainbow was ultimately preferred on the basis of its 100% minority ownership, the case was appealed to the United States Court of Appeals for the District of Columbia Circuit (Case No. 85-1755). After the case had been briefed and was awaiting argument, the Commission requested remand based upon the agency's intention to review its minority preference policies. In November 1986, the Commission ordered the Rainbow proceeding held in abeyance pending the outcome of that minority policy review (1 F.C.C. Rcd. 1315 (1986)). That hiatus was terminated by the enactment of Public Law No. 100-202 (1987) and FCC 88-17, released January 14, 1988, reinstating the Commission's minority preference policies.

The reinstatement of the Commission's minority preference policy resulted in return of the Rainbow proceeding to the Court of Appeals in June 1988 where, after

complete rebriefing and argument, Rainbow's grant was affirmed in May 1989. A petition for writ of certiorari was filed in September 1989 and granted in March 1990. Rainbow's grant was finally affirmed by the Supreme Court on August 30, 1990.

Despite the various appellate proceedings and the fact that the Commission itself vacated Rainbow's construction permit during its 1986 to 1988 review of the minority preference policy, Rainbow was nonetheless required to seek construction permit extensions throughout the entire appeal period. Thus before Rainbow's grant and the minority preference policy were confirmed by the Supreme Court, Rainbow had been required to request five Form 701 and 307 extensions of time to construct.[2/]

The Inspector General's discussion of this history in the "Background" section of his Report (at page 2) is in several respects misleading. First, it is implied that Rainbow procrastinated in going forward with construction and was the beneficiary of extraordinary Commission patience. That implication is both erroneous and highly prejudicial. The only extension requests filed after the completion of judicial review were those filed

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2/ Rainbow filed its requests on the following dates: July 11, 1988 (Form 701); May 10, 1989 (Form 307); November 17, 1989 (Form 307); May 30, 1990 (Form 307); and July 31, 1990 (Form 307).

by Rainbow on January 25, 1991 and June 25, 1991. Rainbow was never afforded the normal 24 month period to construct its facility that the Commission's Rules (Section 73.3598) permit. Subsequent to the Supreme Court affirmance, Rainbow was given only a six month extension on February 5, 1991.[3/] Pursuant to the terms of its six month extension, Rainbow filed a second post-appellate Form 307 extension request on June 25, 1991 and Press filed an "Informal Objection" on July 10, 1991. This request was not acted on by the Mass Media Bureau for almost two years. Letter of Barbara Kreisman, Chief Video Services, June 18, 1993. Similarly, Rainbow's November 27, 1991 Form 316 pro forma request to reorganize from a general to a limited partnership,[4/] which again drew an "Informal Objection" from Press, was not acted on for over a year and a half, until June 18, 1993. *Id.*

3/ Press Broadcasting Company, Inc. filed an "Informal Objection" to Rainbow's extension request on February 15, 1991, subsequent to grant. Because of its late filing, Press resubmitted its "Informal Objection" as a Petition for Reconsideration on February 25, 1991, reciting the fact that it was a late filed informal objection.

4/ Rainbow's proposed reorganization to as limited partnership contemplated no change in voting authority. The general partners retained 100% of the voting interest. As Rainbow explained in its Form 316 request, the change was sought to permit equity in lieu of debt financing.

Second, the Report states (at page 3) that in responding to Clay Pendarvis' March 22, 1993 letter request for further information, Rainbow simply said that it had taken no action since construction of its $60,000 transmitter building in November 1991. That is not the case. Rainbow also informed the Bureau that it had expended some $500,000 on tower rental and that its limited partnership funds could not be released until it was permitted to assign its permit to the partnership. Letter of Margot Polivy to Clay Pendarvis dated 12 April 1993. Rainbow informed the Bureau that its projected time schedule contemplated timely Commission action on its pro forma 316 assignment, not an 18 month delay, but that it continued ready to adhere to its 6 month construction schedule as soon as the Bureau acted on the application which had been pending for some 18 months. *Ibid.*, attached Statement of Joseph Rey.

Third, the Inspector General's Report omits any recitation of my conversation with Paul Gordon on June 24, 1993. On that date, I telephoned Mr. Gordon to again enquire about the status of Rainbow's pending applications.[5/] On this occasion he informed me that a letter

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5/ Since March 1992 I had spoken to Mr. Gordon on several previous occasions. While I did not seek to discuss the merits of the case, I did emphatically seek to ascertain why the Bureau could not act on two straight-

had been sent dated June 18, 1993. Since I had not yet received the letter, I asked what action had been taken. He told me the result and offered to read me the letter. To say the least, I was dumbfounded. The notion that the Bureau could sit on two routine and fundamental applications for two years and then fault the permittee for not going forward with construction dependent on grant of those applications was appalling. The fundamental unfairness led me to believe that a terrible mistake had been made. I expressed my shock and asked Paul Gordon who I could talk to about this and he said Clay Pendarvis. I asked him whether he thought Roy Stewart would meet with me to discuss it. He said he didn't know, I would have to ask Roy. At no time during this conversation did Paul Gordon say or suggest that this was a restricted proceeding or that the *ex parte* rules applied. At no time did he say or suggest that it would be improper to talk to or meet with either Mr. Pendarvis or Mr. Stewart.

Finally, the Inspector General's Report (at page 3) recites that Press has "vigorously opposed Rainbow's

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forward pending applications in a period of one to two years. Such enquiries are not considered "presentations" for *ex parte* rule purposes. 47 C.F.R. § 1.1202(a) NOTE. Not once did Mr. Gordon tell me that he thought Rainbow's pending applications were part of a restricted proceeding.

requests . . . " but omits any mention of the fact that Press lacks standing to object to Rainbow's extension and assignment applications. It was because of this lack of standing that Press perforce filed informal objections to those applications and because of the informal nature of the objections and Press' lack of standing that the *ex parte* restrictions did not apply to this proceeding. The Inspector General apparently believes that a pleading is "formal" within the meaning of the *ex parte* rules if it is written in a "vigorous" style.

II. THE INSPECTOR GENERAL'S READING OF THE EX PARTE RULES IS ERRONEOUS AS A MATTER OF LAW.

The Inspector General's reading of the *ex parte* rules is prohibited by the text of the rules themselves. Pursuant to Rule 1.1204(1), Rainbow's applications for extensions of time to construct and for pro forma transfer of control were exempt from the *ex parte* rules. That section provides that such an adjudicative proceeding is exempt "unless it":

> (i) is formally opposed or involves a formal complaint (see § 1.1202(e)); or
>
> (ii) involves mutually exclusive applications; or
>
> (iii) has been designated for hearing . . . .

47 C.F.R. § 1.1204(1).

Rainbow's subject applications did not involve mutually exclusive applications and were not designated for hearing. They were thus exempt from the *ex parte* rules unless "formally opposed" as defined in Rule 1.1202(e). Rule 1.1202(e)(1) provides that in order to constitute a formal opposition, a pleading must meet all three of the following requirements:

> (i) The caption and text of the pleading [must] make it unmistakably clear that the pleading is intended to be a formal opposition . . . ;
>
> (ii) The pleading [must be] served upon the other parties . . . ; and
>
> (iii) The pleading [must be] filed within the time period, if any, prescribed for such a pleading . . . .

47 C.F.R. § 1.1202(e)(1).

Prior to the July 1, 1993 meeting found by the Inspector General to constitute a violation of the *ex parte* rules, Press had filed opposition pleadings as follows:

1. On February 15, 1991, Press filed a document entitled "Informal Objection," opposing grant of BMPCT-910125KE, a Rainbow request for extension of time to construct. That pleading was denominated in its caption an "Informal Objection" and therefore failed to satisfy Rule 1.1201(e)(1)(i). Moreover, it was not filed until after the Commission had acted and therefore failed to satisfy Rule 1.1201(e)(1)(iii), because informal

objections must be filed "[b]efore FCC action on any application for an instrument of authorization." 47 C.F.R. § 73.3587. Press' first pleading accordingly did not affect the exempt status of the proceeding.

2. On February 25, 1991, Press filed a brief document entitled "Petition for Reconsideration," which recited that since the "Informal Objection" had been untimely, it was being resubmitted under a new title. As resubmitted, then, the "Informal Objection", which had originally failed to satisfy Rule 1.1202(e)(1)(i) because its caption denominated it an "informal objection", now failed to satisfy that rule because its text specifically identified it as an informal objection. Press' second pleading accordingly had no effect on the exempt status of this proceeding.

In fact, however, Press' second filing could not have affected the exempt status of the proceeding, however denominated in either its text or its caption: Rule 1.106 does not provide for the filing of petitions for reconsideration by informal objectors and the Commission has therefore held such petitions to be prohibited. *Redwood Microwave Association, Inc.*, 61 F.C.C.2d 442, 38 R.R.2d 1073 (1976).

Moreover, the Commission requires more of petitioners for reconsideration than for initial objectors to an action, whether their opposition be formal or informal, and Press' filing, even if it had not been facially prohibited, failed to meet those requirements. Under Rule 1.106(b)(1), non-party petitioners for reconsideration must "state with particularity the manner in which [their] interests are adversely affected by the action taken and . . . show good reason why it was not possible for [them] to participate in the earlier stages of the proceeding." Press failed on both of these independently dispositive grounds to justify its petition: it conceded in its petition that it had simply failed to file on time; and it neither attempted to nor could have made the requisite showing of injury from grant of the requested extension of time to construct. Press' only potential injury is inauguration of a competing service, not a cognizable injury.[6/]

Notwithstanding the formality of its title, then, Press' second pleading was in fact both facially unauthorized and substantively defective without regard to the ex parte rules. It was thus a legal nullity which

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6/ Indeed, since the action it opposed was one whose only effect was delaying the inauguration of that competing service, it was effectively benefited by the Commission's action.